RECENT CASES

ADJOINING LANDOWNERS—LATERAL SUPPORT—DAMAGES.—ORR V. DAYTON & M. TRACTION CO., 96 N. E. (IND.), 462.—*Held,* that the damages recoverable for the removal of the lateral support from land is the depreciation in the value of the land; such damages being recoverable irrespective of negligence.

The right to the lateral support of one's land in its natural condition is universally conceded. *Trowbridge v. True,* 52 Conn., 190; *Cabot v. Kingman,* 166 Mass., 403; *Farrand v. Marshall,* 19 Barb. (N. Y.), 380. However, most Courts hold that no action lies for an injury to the right of support until actual damage has occurred, the actionable wrong not being the excavation, but the act of allowing the other's land to fall. *Bonomi v. Backhouse,* El. Bl. & El., 622; *Schultz v. Bower,* 57 Minn., 493; *Smith v. Scattle,* 18 Wash., 484. Some Courts hold that the measure for damages for the loss suffered is the cost of restoring the same to as good a condition as it was before the excavation was made. *Stimmel v. Brown,* 7 Houst., (Del.), 219. Other Courts hold that prospective damages may be granted, the object being to consider the possible future damage that will probably result from the excavation. *Williams v. Missouri Furnace Co.,* 13 Mo. App., 70; *McGowan v. Bailey,* 146 Pa., 572; *Jones v. Seattle,* 23 Wash., 753. In accord with the principal case, the measure of damages as recognized by most Courts is the diminution in market value of the injured property. *Schroeder v. Joliet,* 189 Ill., 48; *Moellering v. Evans,* 121 Ind., 195; *McGuire v. Grant,* 25 N. J. L., 356. And, moreover, the right to damages is maintainable whether or not there was any negligence. *Foley v. Wyeth,* 2 Allen (Mass.), 131; *Ulrich v. Dakota L. & T. Co.,* 2 S. D., 285. As this applies only to land in its natural state, it does not apply to lands burdened with buildings, and to recover for damage done to such buildings by the removal of lateral support, it is necessary to show negligence. *Gilmore v. Driscoll,* 122 Mass., 199.

CONTRACTS—LEGALITY—RESTRAINT OF TRADE.—SMITH V. WEBB, 50 SOUTHERN, 913, ALABAMA.—*Held,* that an agreement by a vendor of a business not to engage in a similar business in opposition to the vendee is not void as being in restraint of trade, although not limited as to time of duration.

The weight of American authority is to the effect that agreements in restraint of trade are valid if they are partial in their operation, based upon valuable consideration, and reasonable and unoppressive in their conditions. *Holmes v. Martin,* 10 Ga., 503; *Grasselli v. Lowden,* 11 Ohio, 349; *Booth & Co. v. Siebold,* 74 N. Y. S., 776. Thus where contracts are limited as to time and place they will be deemed valid; *Perkins v. Lyman,* 9 Mass., 522; *Perkins v. Clay,* 54 N. H., 518; but even where limited as

to time and place contracts will be deemed void as in restraint of trade if conditions are such as will affect monopoly, stifle competition, or otherwise operate against public policy. *Western Wooden Ware Asso. v. Starkey,* 84 Mich., 76. Restriction as to place has been held in the United States Courts not to mean within State boundaries; *Oregon Steam Navigation Co. v. Winsor,* 87 U. S., 64; although the general rule is that restriction as to an entire State is void. *Consumers Oil Co. v. Nunnemaker,* 142 Ind., 560; *Taylor v. Blanchard,* 95 Mass., 370. Agreements limiting as to time and unlimited as to place are held valid if the conditions are such as warrant such clauses, so that the party from whom the consideration moves will not be prejudiced. *Callahan v. Donnelly,* 45 Cal., 152. Where the contract is unlimited or indefinite as to time it will not be held invalid if limited as to location; *Cook v. Johnson,* 47 Conn., 175; *Smith v.* Brown, 164 Mass., 584; but where there was no limitation as to the time in respect to a subject matter local in its nature, where limitation or nonlimitation as to extent of territory was necessary, it was held to be void as in restraint of trade and against public policy. *Ford v. Gregson,* 7 Mont., 89. Contracts in restraint of trade and unrestricted as to time and place are void. *Alger v. Thatcher,* 36 Mass. (19 Pick.), 51; *Albright v. Teas,* 37 N. J. Eq. (10 Stew.), 171.

CONTRACTS—PARTIES—PROMISE FOR BENEFIT OF THIRD PERSON.—SHEPPARD V. BRIDGES, ET AL., 74 S. E., (GA.), 245.—*Held,* that where one person for a valuable consideration, agrees with another to pay the debts of the latter, this alone does not authorize a creditor of the promisee to bring an action at law against the promisor to recover the debt.

The English rule is that a stranger to the consideration can maintain no action upon a contract; *Crow v. Rogers,* 1 Stra., 592; *Price v. Easton,* 4 B. & Ad., 433; and there is no exception made even in the case of parties closely related. *Gandy v. Gandy,* 30 Ch. Div., 57. Early Massachusetts cases opposed the English doctrine; *Felton v. Dickenson,* 10 Mass., 287; but later the English rule was adopted. *Mellon v. Whipple,* 1 Gray (Mass.), 317; *Marston v. Biglow,* 150 Mass., 45. A few other States favor the theory of the English decisions. *Butterfield v. Hartshorn,* 7 N. H., 345; *Crampton v. Ballard,* 10 Ver., 251. The New York Courts, however, early maintained the right of a third person to sue on the contract, and this is the present weight of authority in this country. *Mason v. Hall,* 30 Ala., 599; *Lawrence v. Fox,* 20 N. Y., 268. But even these Courts hold such third person must have some legal or equitable interest in the performance of the contract. *Carter v. Darby,* 15 Ala., 696; *Lowe v. Turpie,* 147 Ind., 652. Virginia leaves the question still open. *Willard v. Worsham,* 76 Va., 392; *Jones v. Thomas,* 21 Gratt. (Va.), 101. And in Connecticut, Maryland, and Pennsylvania, though the general rule is there regarded as the English rule, still the exceptions to it are so numerous that in reality they rather follow the general American doctrine. *Meech v. Ensign,* 49 Conn., 191; *Seigman v. Hoffacker,* 57 Md., 321; *Merriman v. Moore,* 90 Pa. St., 78.